



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 9, 2002

Robert T. Prior, Esq.  
288 South Main Street  
Madison, Georgia 30650

Dear Mr. Prior:

This refers to the 2002 redistricting plans for the Putnam County School District and the Board of Commissioners of Putnam County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 19, 2002, request for additional information on July 26 and 29, 2002.

We have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plans for the Board of Commissioners and Board of Education.

The 2000 Census indicates that Putnam County has a total population of 18,812 persons, of whom 5,622 (29.9%) are black. The county's voting age population is 14,444, of whom 3,804 (26.3%) are black. Both the county commission and board of education are governed by five-member boards. Voters elect four commissioners or school board members to four-year terms from single-member districts, with the chair of each board being elected at large. The benchmark plan when these plans were originally submitted, the 1992 districting plan, was invalidated by the 11<sup>th</sup> Circuit Court of Appeals' decision in Clark v. Putnam County, 293 F.3d 1261 (11<sup>th</sup> Cir. 2002). We agree with you that this leaves the 1982 districting plan as the valid benchmark plan, since it is the most recent (and only) legally-enforceable

districting plan under which elections have been held in Putnam County.

Under the 2000 Census data detailed above, there are two districts under the 1982 benchmark plan, Districts 1 and 2, in which black persons are a majority of the voting age population: District 1 has a black voting age population of 73.3 percent, while District 2 has a black voting age population of 57.6 percent. In contrast, the proposed 2001 redistricting plans contain only one district in which black persons are a majority of the voting age population. According to the information that you provided, the black percentage of the voting age population in proposed District 1 is cut almost in half, to 39.0 percent, while the black percentage of the voting age population in proposed District 2 drops slightly to 56.7 percent.

Within the context of electoral behavior in Putnam County, the county has not established that implementation of this plan will not result in a retrogression in the ability of black voters to effectively exercise their electoral franchise. Moreover, alternative plans developed by the county and others indicate that redistricting plans may be drawn which virtually eliminate the reduction in minority voting strength in proposed Districts 1 and 2.

Our analysis of county elections shows that black voters in Districts 1 and 2 have been electing candidates of choice since at least 1992, and that those candidates are elected on the basis of strong, cohesive black support. Our statistical analysis also shows that white voters do not provide significant support to candidates supported by the minority community. As a result, the proposed reduction in the black voting age percentage in District 1 casts substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan, even if the current incumbent in District 1 continues to run for office.

Our review of the county's benchmark and proposed plans as well as the alternative plans presented to the county, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan, and the likely resulting retrogressive effect, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to lessen retrogression in District 1, maintain the minority voting strength in District 2, and meet the county's redistricting criteria. For instance, the county shifted several hundred persons, the majority (65.6 percent) of whom are black, from District 1 under the 1992 plan,

which was significantly underpopulated according to the 2000 Census, into proposed District 4, which was overpopulated in the 1992 plan, and which is over 80 percent white. Accordingly, we are not persuaded by the county's contention that, if one is to honor the redistricting criteria used by the county, a reduction in minority voting strength in District 1 was necessary to preserve the minority voting strength in District 2.

Under the Voting Rights Act, a jurisdiction seeking to implement proposed changes affecting voting, such as a redistricting plans, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F. Supp. 2d 25, 77 (D.D.C. 2002). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the consideration discussed above, I cannot conclude that your burden of showing that these submitted changes do not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plans.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Please note that the Attorney General will make no determination regarding the submitted realignment and renumbering of voting precincts, the polling place changes, the elimination

and renaming of polling places, and the temporary additional early voting locations and their hours because those changes are dependent upon the objected-to redistricting plan.

Further, in our letter of July 19, 2002, we informed you that, under the Voting Rights Act, changes, such as the county's proposed redistricting plans, are not legally enforceable until the jurisdiction has obtained Section 5 preclearance for those changes. Clark v. Roemer, 500 U.S. 646 (1991). However, it is our understanding that on August 20, 2002, Putnam County is scheduled to conduct a primary election under the proposed plan, for two seats on the Board of Education. Please inform us of the action Putnam County plans to take regarding both the objection interposed by this letter as well as the upcoming August 20 primary election.

If you have any questions on these matters, you should call Mr. David Becker (202-514-3090), an attorney in the Voting Section. Refer to File Nos. 2002-2987 and 2002-2988 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



J. Michael Wiggins  
Acting, Assistant Attorney  
General